

EXHIBIT B



United Plaza
30 South 17th Street
Philadelphia, PA 19103

Telephone: +1-215-568-6400
Facsimile: +1-215-568-6499
www.volpe-koenig.com

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Kristine L. Butler
kbutler@volpe-koenig.com

December 14, 2010

The Honorable Patty Shwartz
United States Magistrate Judge
U.S. Post Office & Courthouse
Federal Square, P.O. Box 999
Newark, NJ 07101-0999

VIA HAND DELIVERY

Re: *Lottotron, Inc. v. EH New Ventures Inc., et al.*
Civil Action No.: 2:09-cv-04942-FSH-PS
Lottotron, Inc. v. Peak Entertainment N.V., et al.
Civil Action No.: 2:09-cv-06387-FSH-PS (consolidated)

Dear Judge Shwartz:

In preparation for the Pretrial Conference before Your Honor on December 21, 2010 at 12:30 pm, enclosed please find the original, as well as a copy, of the Proposed Joint Pretrial Order as prepared by the parties.

We appreciate the Court's attention to this matter and we remain available to provide Your Honor with any additional information.

Respectfully submitted,

Volpe and Koenig, P.C.

By: A handwritten signature of Kristine L. Butler is written over a horizontal line.
Kristine L. Butler

KLB/naf
Enclosure

cc: The Honorable Faith S. Hochberg, U.S.D.J. (via overnight mail)
All Counsel of Record (via e-mail only)

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
NEWARK DIVISION**

| | |
|---------------------------------------|----------------------------------|
| LOTTOTRON, INC., |) |
| |) |
| Plaintiff, |) |
| |) Civ. No. 2:09-cv-04942 FSH-MAS |
| |) |
| v. |) |
| |) |
| EH NEW VENTURES INC., <i>et al.</i> , |) |
| |) |
| Defendants. |) |

FINAL PRETRIAL ORDER

This matter having come before the Court for a pretrial conference pursuant to Fed. R. Civ. P. 16; Kristine L. Butler and George C. Summerfield having appeared for plaintiff, and William Gantz and Marc S. Friedman having appeared for defendant, Interactive Systems Inc., NV (“ISI”); all counsel having been notified that:

- (1) a jury trial in this matter has been scheduled before Hon. Faith S. Hochberg on January 11, 2011;
- (2) the pretrial submissions detailed in ¶¶ 2 and 18 below are to be submitted no later than December 31, 2010 or they will be deemed waived; and
- (3) a pretrial housekeeping conference is scheduled before Judge Shwartz on December 21, 2010;

The following Pretrial Order is hereby entered:

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1338. There is no dispute as to personal jurisdiction.
2. There are no contemplated pretrial motions.

3. The parties stipulate the term “wagering formats” means “the kind of lottery games that are available, such as Keno, Lotto, and 3- or 4- digit lotteries.” The parties stipulate further that the accused www.sportsbetting.com website satisfies all of the limitations of Claims 5 and 8 of the ‘865 patent in suit, except, however, that ISI maintains: 1) that the terms “lottery format,” “lottery game format,” “lottery game,” “lottery ticket,” and “lottery” as used in the ‘865 patent are not the equivalent of the ISI Games; and 2) the ISI Games are not the equivalent of the “wagering formats” limitation of the asserted claims. The ISI Games are those casino games offered by the accused www.sportsbetting.com website which Plaintiff contends infringe the ‘865 patent, excluding live poker played against others. In addition, betting on sporting events or horse racing are not at issue.

4. The plaintiff does not ask the Court to take judicial notice of any facts in this matter.

5. ISI does not ask the Court to take judicial notice of any facts in this matter.

6. Plaintiff’s Contested Facts

Whether two or more games offered on ISI’s accused www.sportsbetting.com website are equivalent to the “wagering format” limitation of claims 5 and 8 of the ‘865 patent, as that term has been construed.

7. Defendant’s Contested Facts

Whether the ISI Games offered on ISI’s accused www.sportsbetting.com website are equivalent to the “wagering formats” limitations of claims 5 and 8 of the ‘865 patent, where such “wagering formats” are defined as “the kind of lottery games that are available, such as Keno, Lotto, and 3- or 4- digit lotteries.”

8. Plaintiff will call Joseph Fiscella as its sole fact witness in its case-in-chief in this matter.

9. ISI may call Joseph Fiscella as its sole fact witnesses in its case-in-chief in this matter without the requirement of a trial subpoena.

10. Expert Witnesses

- a. Plaintiff intends to call as its sole expert in this case Stacy Friedman.
- b. Defendant intends to call as its sole expert in this case Melissa Blau.
- c. Lottotron has filed a motion to disqualify Ms. Blau.
- d. ISI intends to move to disqualify or bar Mr. Friedman.

11. Plaintiff's Depositions

- a. Plaintiff's Designations

Fry Dep. Tr. 9:5-9; 87:23-88:13; 93:14-17; 94:21-95:18; 96:19-97:23

- b. Defendant's Objections

None.

12. Defendant's Depositions

- a. Defendant's Designations

Fry Dep. Tr. 47:20-22; 82:13-83:23; 89:21-90:2; 90:22-91:5; 91:22-93:13; 106:14-23; 107:4-22; 126:8-11; 126:14-22

- b. Plaintiff's Objections

Fry Dep. Tr. 82:13-83:23; 89:21-90:2; 90:22-91:5; 126:8-11; 126:14-22 all on relevance grounds

13. Plaintiff's Exhibits

- A. Plaintiff intends to introduce in evidence the exhibits listed below

PX1 '865 Patent

PX2 '865 Patent Prosecution

PX3 U.S. App. Ser. No. 08/781,609, Office Action (April 8, 1998)

PX4 Stacy Friedman *Curriculum Vitae*

PX5 Excerpt from <http://www.ballytech.com/Company-Information/history/the-modern-era.html>

| | |
|-------|---|
| PX6 | Page 223 from Fey, M., Slot Machines: America's Favorite Gaming Device |
| PX7 | Table summarizing games offered by State lotteries |
| PX8 | The parties' stipulation on liability |
| PX9 | ISI's Responses to Lottotron's First Set of Requests to Admit (Fry Dep. Ex. 7) |
| PX10 | Screen shot of http://www.sportsbetting.com/help/faq/casino.html#2 (Fry Dep. Ex. 8) |
| PX11 | Screen shots of www.sportbetting.com EndZone and Texas Hold 'Em scratch games |
| PDX 1 | Highlighted enlargement of claim 5 |
| PDX 2 | Highlighted enlargement of claim 8 |
| PDX3 | Comparison of scratch card games |
| PDX4 | Comparison of how to play scratch card games |
| PDX5 | Comparison of video lottery terminals to ISI's Cosmic Cash video slot |

B. ISI objects to the introduction of plaintiff's exhibits:

PX2 is the entire patent prosecution file, which should not be admitted. As a May 2011 trial date was originally contemplated, Plaintiff has ordered and does not possess an entire certified record of the prosecution file at this time. Accordingly the parties have agreed to refer to the prosecution file generally and to reserve objections concerning relevance or prejudice at trial, and will confer as soon as the prosecution file becomes available.

Relevance: PX4, PX5, PX6, PX7, PX8, PX9, PDX3, PDX4, PDX5

Foundation and Hearsay: PX4, PX5, PX6, PX7, PDX3, PDX4, PDX5

14. ISI's Exhibits

A. ISI intends to introduce in evidence the exhibits listed below

| | |
|------|--|
| DX1 | Lottotron's '865 Patent |
| DX2 | '865 Patent Prosecution |
| DX3 | Lottotron's '416 Patent |
| DX4 | Lottotron's '047 Patent |
| DX5 | Lottotron's '619 Patent |
| DX6 | U.S. App. Ser. No. 08/781,609, Office Action (April 8, 1998) |
| DX7 | U.S. App. Ser. No. 08/781,609, Preliminary Amendment (Jan. 16, 1997) |
| DX8 | U.S. App. Ser. No. 09/115,774 Response to Office Action(Jan. 16, 1997) |
| DX9 | U.S. App. Ser. No.09/115,774, Office Action (September 17, 1998) |
| DX10 | U.S. App. Ser. No. 09/115,774 Office Action (September 24, 1998) |
| DX11 | U.S. App. Ser. No. 09/115,774 Response to Office Action and Amendment (November 9, 1998) |
| DX12 | U.S. App. Ser. No. 09/115,774 Notice of Allowability (January 26, 1999) |
| DX13 | U.S. App. Ser. No. 08/751,902, Office Action (November 17, 1998) |
| DX14 | Screen shots of www.sportbetting.com Black Jack, Roulette, Pachinko, Video Poker, Slots |
| DX15 | <i>Melissa Blau Curriculum Vitae</i> |

| | |
|------|---|
| DX16 | Lottotron's Responsive Statement of Facts in Support of its Opposition to Motion for Summary Judgment |
| DX17 | Lottotron's Initial Infringement Contentions |
| DX18 | Amtote On-Track Specification for Automated Telephone Betting System (April 1987) |
| DX19 | J. Scagnelli Memo dated January 12, 1988 (Fiscella Dep. Exh. 4) |
| DX20 | J.Scagnelli Sales Memo (Fiscella Dep. Exh. 7) |
| DX21 | U.S. App. Ser. No. 07/489,814, Office Action (March 11, 1991) (L00311-315) |
| DX22 | U.S. App. Ser. No. 08/751,902, Office Action (November 10, 1998) |
| DDX1 | '865 Patent - Figures |
| DDX2 | '865 Patent -Col 1, Col 2, Col 3, Col 5, Col 6 |

B. Plaintiff objects to the introduction of ISI's exhibits

Relevance: DX3, DX4, DX5, DX13, DX16-22

Foundation and Hearsay: DX14

Plaintiff has not yet reviewed DDX 1 and 2, but has no objection thereto based upon the defendant's description thereof. However, plaintiff reserves the right to object thereto upon review thereof.

15. Plaintiff's legal issue is the proper test for determining infringement under the doctrine of equivalents.

16. Defendant's legal issue is the proper test for determining infringement under the doctrine of equivalents and evidence deemed relevant to the test for equivalence.

17. Miscellaneous

- A. The parties have agreed that the proper construction of the term "wagering formats" is "the kind of lottery games that are available, such as Keno, Lotto, and 3- or 4- digit lotteries."
- B. The parties have stipulated that ISI's affirmative defense of collateral estoppel is now moot.
- C. Lottotron is only asserting infringement of claims 5 and 8 of the '865 patent in this matter.
- D. The parties have stipulated that the only remaining issue to be tried is whether the ISI games offered on the accused Sportsbetting.com are equivalent to the "wagering formats" limitation of the asserted claims, construed as "the kind of lottery games that are available, such as Keno, Lotto, and 3- or 4- digit lotteries."
- E. This Court's summary judgment ruling on the issue of infringement has resolved ISI's affirmative defense of prosecution history estoppel.
- G. ISI has withdrawn all affirmative defenses and counterclaims except however that ISI maintains the affirmative defense and counterclaim of non-infringement.
- H. The parties have reached a confidential damages stipulation such that the issue of damages is not to be tried.

18. The following is to be submitted to the Court no later than December 31, 2010

- A. Each side shall submit to the Judge and to opposing counsel a trial brief or a memorandum in accordance with Local Rule 7.2, with citations to authorities and arguments in support of its position on all disputed issues of law. In the event that a brief shall not be filed, the delinquent party's complaint or defense may be stricken.
- B. Counsel shall submit jointly to the Court a single set of: proposed preliminary and final jury instructions as to which the parties are in agreement. Counsel for each party shall also submit to the Judge, with a copy to opposing counsel, written requests for additional instructions to the jury, *only* as to which the parties certify they have not been able to agree. Supplemental requests for instructions as to the facts or legal issues that could not have been anticipated before trial may be submitted at any time prior to argument to the jury. All requests for instructions shall be plainly marked with the name and number of the case, shall contain citations of supporting authorities, if any, and shall designate the party submitting same. In the case of multiple requests by a party, these shall be numbered in sequence and each request shall be on a separate sheet of paper.
- C. If any hypothetical questions are to be put to an expert witness on direct examination, these shall be submitted to the Judge and to opposing counsel.
- D. Counsel shall jointly submit to the Court a single set of proposed *voir dire* questions as to which the parties are in agreement. Counsel shall also

submit to the Judge, with a copy to opposing counsel, any additional proposed *voir dire* as to which the parties certify that they have not been able to reach agreement.

- E. Counsel shall submit to the Court a single proposed special verdict sheet.
- F. Three copies of the joint exhibit list and two joint bench books of trial exhibits shall be submitted to the Court.
- G. Counsel shall provide the Court with a copy of the jury instructions and proposed verdict sheet on a computer disk in a WordPerfect readable format.

19. Not Applicable.

20. Trial Counsel:

A. For Plaintiff:

George C. Summerfield
Kristine L. Butler

B. For ISI:

William M. Gantz

21. The issues of liability and damages will not be tried separately, as there are no remaining damage issues for trial.

22. Estimated length of trial – two days.

AMENDMENTS TO THIS PRETRIAL ORDER WILL NOT BE PERMITTED UNLESS THE COURT DETERMINES THAT MANIFEST INJUSTICE WOULD RESULT IF THE AMENDMENT IS DISALLOWED. THE COURT MAY FROM TIME TO TIME SCHEDULE CONFERENCES AS MAY BE REQUIRED EITHER ON ITS OWN MOTION OR AT THE REQUEST OF COUNSEL.

/s Kristine L. Butler

Kristine L. Butler, Esquire
Michael F. Snyder, Esquire
Ryan W. O'Donnell, Esquire
VOLPE AND KOENIG, P.C.
United Plaza
30 South 17th Street
Philadelphia, Pennsylvania 19103
Facsimile: (215) 568-6499

George C. Summerfield
STADHEIM & GREAR
400 North Michigan Avenue
Suite 2200
Chicago, Illinois 60611
Facsimile: (312) 755-4408
Attorneys for Plaintiff Lottotron, Inc.

s/ Marc S. Friedman

Marc S. Friedman
SNR Denton US LLP
101 JFK Parkway
Short Hills, NJ 07078
Facsimile: (973) 912 7199

s/ William M. Gantz

William M. Gantz
SNR Denton US LLP
233 S. Wacker Drive
Suite 7800
Chicago, Illinois 60606
Facsimile: (312) 876-7934

Attorneys for Defendant Interactive Systems Inc., N.V.

So Ordered.

HONORABLE PATTY SHWARTZ
UNITED STATES MAGISTRATE JUDGE

Date